

12-CR-00001-AF

HONORABLE Judge Hasnik,

8-1-13

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF  
AMERICA - Plaintiff

v

Defendant

TIMOTHY G DORAN

No. CR12-0001 RSL

Motion to Withdraw  
Guilty Plea

It comes now the defendant Timothy George Doran and moves the Court for an order allowing him to withdraw his guilty plea. Defendant make the following statements in support of this motion.

Relevant Facts

1) ON January 5, 2012 defendant was indicted for failing to register as a sex offender, pursuant to 18 U.S.C. 2250

2) Said failure to register stemmed from a state conviction for 2nd degree Rape, 1992.

3) Defendant completed his term of incarceration in 1998.

4) Defendant, believing that his obligation to register expired after 10 years, met said obligation through the King County Sheriff's.

1 department and Seattle Police until 2008.

2  
3 5) At the time of defendant's conviction,  
4 SORNA was not in place.

5  
6 6) After completing what he believed was  
7 his obligation to register and update his  
8 information in 2008, defendant traveled to  
9 Vietnam.

10  
11 7) Upon returning to the United States  
12 in 2011, some time after defendant was made  
13 aware of the fact that he had been indicted  
14 on the Federal charge of "Failure to Register  
15 as a sex offender, pursuant to 18 U.S.C. 2250.

16  
17 8) Upon being made aware of the above  
18 charge, defendant self surrendered to the  
19 U.S. Marshals.

20  
21 9) Defendant has been held in custody  
22 since he self surrendered.

23  
24 Claim 1

25  
26 The indictment is based on false, 3rd  
27 party hearsay by U.S. Marshal Senior Investig-  
28 ator Lisa Stephenson, which does not  
29 support the charge.

30  
31 Argument

32  
33 Defendant argues that the Government's

1 Key witness, with full cooperation of the  
2 United States Attorney's office, lied to the  
3 Grand Jury in order to have defendant  
4 indicted for failure to register.  
5

6 1) Investigator Stephenson stated to the  
7 Grand Jury that "defendant had a warrant  
8 issued for him for failing to register by the  
9 King County Sheriff's dept." grand jury trans. pg.  
10 3; 4, 5 & 6 lines.  
11

12 2) The U.S. Attorney's office proffered NO  
13 proof that King County had such an active  
14 warrant, prior to or even after an Interpol  
15 request dated March 11, 2011. No where in any  
16 of the discovery does the U.S. Attorney's office  
17 supply a copy of such a warrant. The above  
18 mentioned Interpol request was a simple "locate  
19 and question" request.  
20

21 3) Investigator Stephenson goes on to admit  
22 that defendant was convicted of 2<sup>o</sup> Rape in  
23 1992, grand jury trans. pg. 4 lines 5 & 6, but  
24 then in order to convince the Grand Jury  
25 that the defendant had a "life time" registration  
26 requirement, instead of 10 yrs, that a 2<sup>o</sup> Rape  
27 conviction would require, she goes on to  
28 ~~mis~~<sup>TP</sup> categorize defendant's offense  
29 as a Class A felony instead of the Class  
30 B that it is. grand jury trans. pg. 5 lines 3 & 4.  
31

32 4) Defendant asserts that the only time  
33 the government's key witness, investigator Stephenson,

1 states that defendant had any registration  
2 requirement longer than 10 yrs. is when she  
3 states: "He was convicted of a Class A felony,  
4 so the duration is life time".  
5

6 5) Investigator Stephenson knew this to be  
7 false, because she already stated defendant  
8 was convicted in 1992 of 2<sup>o</sup> Rape. 2<sup>o</sup> Rape of  
9 an adult is a Class B felony only requiring  
10 a 10 year registration obligation.  
11

12 6) At no time does the government supply  
13 copies of notice advising the defendant of his  
14 duration to register bearing his signature. The  
15 inspector does however admit defendant did  
16 comply with his registration obligation for  
17 10 years after his release from prison. grand  
18 jury trans. pg. 5 line 8, 9 & 10.  
19

20 7) Defendant argues that in order to be  
21 found guilty of "failure to register" pursuant  
22 to 18 U.S.C. 2250, Three elements must be proven:  
23 1) That at the time of offense, (in this case  
24 some time after October 4, 2009 as seen in the  
25 indictment), defendant had an obligation to register  
26 in the state he resides in. 2) That he traveled in  
27 interstate or foreign commerce, and, 3) did  
28 fail to register in the state he relocated to.  
29

30 8) In defendant's case if we break down  
31 the three requirements regarding 18 U.S.C. 2250,  
32 it becomes clear, that the indictment is  
33 fatally flawed.

1 9) The first requirement is that the defendant  
2 is required (at the time of his indictment) to  
3 register as a sex offender. The government attempts  
4 to satisfy this requirement in the indictment by  
5 stating "a sex offender who is required to register  
6 and update his sex offender registration".

7  
8 10) Again, defendant can only assume the  
9 government means he was required to register &  
10 update his registration by the state of Washington  
11 since he has a pre-SORNA conviction.

12  
13 11) As the government knows, despite misleading  
14 the Grand Jury, Congress vested the power in  
15 the Attorney General to decide how pre-SORNA  
16 cases would be handled. 42 U.S.C. 16915 (duration  
17 of Registration Requirements) gave complete discer-  
18 etion to the Attorney General in those pre-SORNA cases.  
19 U.S. v. Valverde, 628 F.3d 1159, 1162 (9th cir. 2010).  
20 (The Attorney General's guidelines) are found in  
21 73 Fed. Reg. 38,068, where he essentially left  
22 the matter of duration of registration and tolling  
23 of time for subsequent incarcerations up to  
24 states for pre-SORNA cases.

25  
26 12) The RCW's for Washington state show  
27 that a 10 year registration obligation is required  
28 for those offenders convicted of 2<sup>o</sup> Rape of an  
29 Adult, (not like time as presented to the Grand  
30 Jury!) Although it is true, the RCW's do have  
31 alternate durations registration for Rape convictions,  
32 such as 15 years, and life time, those durations  
33 are for offenses involving Rape of a minor, not an adult.

1 In the defendant's case, as seen above  
2 and the Grand Jury transcripts, the defendant  
3 fulfilled his registration obligation for the 10 years  
4 subsequent to his release from incarceration in 1998.  
5

6 The Government claims that they were  
7 made aware of a warrant for failure to register  
8 in October of 2011 issued by King County. They  
9 claim to have received a copy of an Interpol  
10 "request to question" filed March 2011 regarding  
11 an unrelated matter in Vietnam from King County  
12 along with the supposed warrant.  
13

14 Even in the Government's Grand Jury  
15 witness's (Investigator Lisa Stephensen's) own  
16 "Report of Investigation dated 11-9-2011 under  
17 Section 5 there are multiple boxes to be checked  
18 that advise law enforcement of what action  
19 to take. Instead of checking the box for "Arrest"  
20 she checked the box for "Collateral Lead". It, in fact,  
21 there was an arrest warrant at the time by  
22 King County, why did the investigator not act  
23 on it and mark the box for "Arrest"?  
24

25 In the defendant's case it is the  
26 Government's responsibility to prove the defendant  
27 did not believe he had satisfied his obligation  
28 to register, within the meaning of 18 U.S.C. 2250  
29 (a)(1) which reads "Who so ever is required  
30 to register under the Sex Offender Notification  
31 Act."  
32

33 Absent a notice signed by the

1 defendant supplied by the King County Sheriff's  
2 department advising defendant he had an obligation  
3 to keep his registration updated for more than 10 years  
4 he did so, he is innocent of the charge of  
5 violation of 18 U.S.C. 2250 as alleged in the  
6 indictment.

7  
8 Claim 2  
9

10 1) The defendant asserts that he is legally  
11 innocent of the charge listed in the indictment  
12 and should be allowed to withdraw his plea of  
13 guilty.

14  
15 2) Fed. R. Crim. P. 11(d) allows for a defendant  
16 to withdraw his plea of guilty, after the Court  
17 accepts such a plea but prior to sentencing for  
18 any reason that is "fair and just." See *U.S. v*  
19 *Ortega-Ascanco*, 376 F.3d 879 (CA 9 2001).

20  
21 3) The Appellate Courts have long held that  
22 the term "fair and just" can mean: 1) whether  
23 defendant has asserted his or her legal innocence  
24 in a motion to withdraw his plea (such as this case)  
25 2) The Court should consider the amount of  
26 time that has lapsed between the motion to with-  
27 draw plea and the date of plea, and 3) whether  
28 the Government would be prejudiced by such  
29 motion.

30  
31 4) The defendant argues he has met the  
32 requirements of One (1) and Two (2). Three (3)  
33 should not apply since, gaining the defendants

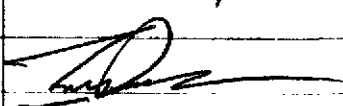


1 guilty plea (based on false information by  
2 the Government to the Grand Jury) and on the  
3 ineffective Counsel who misled the defendant  
4 in believing that "It mattered NOT that the  
5 defendant had satisfied his state obligation  
6 to keep registered, that he was also required to  
7 register for life under SORNA".  
8

9 The Government has spent little time to  
10 do with anything regarding defendant's guilt  
11 for failure to register. Instead they have  
12 concentrated on trying the defendant in a  
13 "Trial within a trial" and building a "Just  
14 in case, case" in regard to "allegation" of  
15 an offense in a foreign country, the Court  
16 has no jurisdiction in!  
17

18 Based on the above mentioned facts,  
19 the defendant moves this Court to allow  
20 him to withdraw his plea of guilty.  
21  
22  
23  
24

25 Sincerely,

26  
27   
28 Timothy Doran  
29  
30  
31  
32  
33